

JACK RUSSO (State Bar No. 96068)
RUSSO & HALE LLP
401 Florence Street
Palo Alto, CA 94301
Telephone: (650) 327-9800
Facsimile: (650) 327-3737
Email: jrusso@computerlaw.com

Attorneys for Defendant
WESLEY MAYDER

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

VERIGY US, INC., a Delaware Corporation,

Plaintiff,

v.

ROMI OMAR MAYDER, an individual;
WESLEY MAYDER, an individual; SILICON
TEST SYSTEMS, INC., a California
Corporation; and SILICON TEST
SOLUTIONS, LLC, a California Limited
Liability Corporation, inclusive,

Defendants.

AND RELATED CROSSCLAIMS.

Case No. 5:07-cv-04330-RMW (HRL)

**DECLARATION OF WESLEY MAYDER
IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT (F.R.C.P., RULE
56) AND MOTION FOR RULE 11
SANCTIONS (F.R.C.P., RULE 11)**

Date: July 18, 2008

Time: 9:00 a.m.

Ctrm: 6

Before the Hon. Ronald Whyte

Complaint Filed: August 22, 2007
Trial Date: December 8, 2008 (jury trial)
(Defendants have elected to reserve their jury
trial rights under F.R.C.P., Rule 38)

87

1 I, Wesley Mayder, declare under penalty of perjury as follows:

2 1. Unless otherwise stated, the matters set forth in this Declaration are true and correct
3 of my personal knowledge, and I could and would competently testify concerning those matters, if
4 I were called as a witness thereto. I submit this Declaration in support of my motion for summary
5 judgment seeking dismissal from this case. As I will explain, I have no direct or indirect control
6 over any of the defendants in this case.

7 **MY EDUCATION**

8 2. I graduated from Monta Vista High School in Cupertino, California in 1987. I then
9 attended Foothill College in Los Altos Hills, California from 1988 to 1990. I then attended De
10 Anza College located in Cupertino, California from 1990-1991.

11 3. Subsequently, I attended San Jose State University in San Jose, California from
12 1991 to 1992.

13 **MY WORK EXPERIENCE**

14 4. I have no experience in the semiconductor industry. I have worked principally in the
15 mortgage industry for over 15 years since 1992, and in the field of Internet marketing for nearly 10 years.

16 5. In October 1999, I established WeDirect, Inc. ("WeDirect"), an online marketing
17 company that optimizes Internet traffic. I am currently Chief Executive Officer of WeDirect.
18 WeDirect does not have any clients in the semiconductor industry.

19 6. I have no expertise or experience in the semiconductor industry, and I have no
20 employees with any expertise or experience in the semiconductor industry. Though WeDirect is an
21 online marketing company, we have no expertise or experience in marketing or promotion for any
22 companies in the semiconductor industry. None of the other defendants is a client or customer of
23 WeDirect and WeDirect has received no compensation from any of them.

24 7. Romi Mayder, the other individual named in this case, is my younger brother.
25 Romi has had no operating or other business role whatsoever in WeDirect; he has never worked for
26 WeDirect, is not and was never on the Board of WeDirect, was never a shareholder of WeDirect,
27 and had no role whatsoever in WeDirect's growth. Similarly, I have had no operating or other
28 business role whatsoever in Romi's business, I have never worked for Romi, am not and was never

1 on any board of directors of any of his companies and I am only a passive shareholder with less
2 than a 21% ownership interest in Silicon Test Systems, Inc., a corporation in which Romi has
3 majority ownership and control over.¹ I have no control over Romi or over any other defendant.

4 **Involvement in Silicon Test Systems LLC**

5 8. In ~~October 2006~~, Romi presented me with the opportunity to invest in his limited
6 liability company, namely, Silicon Test Solutions LLC ("STS LLC"). Before I had even learned
7 of his ideas, Romi had already filed the Articles of Organization of STS LLC, and the first I had
8 heard of STS LLC was in late September 2006. While Romi did not tell me much about STS
9 LLC's work, I trusted (and still trust) Romi and I wanted to support him because he is my brother,
10 so I agreed to become a passive investor in STS LLC.

11 9. I never agreed to become and I never did become an active participant in STS LLC.
12 I understood that my proposed investment would require me to sign a written agreement and I did
13 agree verbally to review and sign (but we never finalized and ~~I never signed~~ *I don't recall signing*) any final version of
14 the Operating Agreement of STS LLC, a true and correct draft copy of which is attached hereto as
15 **Exhibit A**. I never signed the Operating Agreement and it never became a binding agreement.

16 10. The original idea was that Romi was to sign that Operating Agreement and was to
17 own a 51% share in STS LLC, as was Robert Pochowski, who was then Vice-President of STS LLC
18 and who was to own a 29% share in STS LLC and continue to hold his position as an officer of STS
19 LLC with Romi and I was to be a passive investor and own a 20% share in STS LLC. I never
20 became an officer and never had an operating role at all. Indeed, though Romi signed the Operating
21 Agreement, Mr. Pochowski did not because he disagreed with how the ownership was to be
22 distributed. He demanded that I not be a passive investor at all in STS LLC.

23 11. Because Mr. Pochowski never signed the Operating Agreement, I ~~never signed~~ *don't recall signing* the
24 Operating Agreement as well. In all events, I never had any type of control over STS LLC or over
25 any of its other two proposed members. Indeed, I have never had any control over my brother, nor
26 over Mr. Pochowski.

27 ¹ As a shareholder and as Romi's brother, from time to time I have received updates from Romi
28 on his business activities. However, these have been updates only, and I have not directed
Romi or his company in any way.

INVOLVMENT IN SILICON TEST SYSTEMS, INC.

12. Silicon Test Systems, Inc. ("STS Inc.") was formed on December 26, 2006 by Romi. I invested \$250,000 in STS Inc. on January 3, 2007, receiving 20,000 shares of common stock which was approximately a 25% ownership interest. A true and correct copy of the check that I wrote to STS Inc. is attached hereto as **Exhibit B**. A true and correct copy of the stock certificate that I received in return from STS Inc. is attached hereto as **Exhibit C**. Again, I never was an officer, never was a director and never had any operating role and the same is true today.

13. My stock investment in STS Inc. is currently an approximately 21% share, and it is clearly a minority position with no ability to control STS Inc. in any manner. I have no contractual right (or other ability) to become a board member or to become an officer or to become an employee and I have no interest in doing any of those things given how busy I am with my own business, WeDirect. As a shareholder, I receive information that other STS Inc. shareholders receive, namely, whatever management of STS Inc. (currently just my brother) provides to all STS Inc. shareholders. I have no other rights in STS Inc. nor do I have any right to direct any of the lawyers who represent other defendants.

THE CORE DISPUTE APPLICABLE TO ME IN THIS CASE

14. I dispute the contention of plaintiff Verigy US, Inc. ("Verigy") and its counsel that I should be a defendant in this lawsuit simply because I am Romi's brother and/or simply because I am a shareholder in STS Inc. I do not believe this is appropriate. Nor do I believe it is appropriate to have me as a defendant in this case merely because I have done some favors for my brother in referring him to Jon Davidson or in making a gift to him (valued at less than \$500) on the design of his company's web site. I see each of these as favors for my brother and none of them constitutes grounds for me to be named in this lawsuit.

15. I know that Verigy is contending (falsely) that I "aided and abetted" my brother in doing something that they believe was and is wrongful with regard to his lab notebook. However, I believe they misunderstand what my brother was interested in doing, and I know they misunderstand my referral to Jon Davidson. In mid-December 2006, Romi sent me an email asking if I knew of someone who could provide some verification of dates applicable to his lab

1 notebook. I had not seen his lab notebook and I did not even know what was in his lab notebook,
2 but I did know that because of my lack of personal knowledge about these things, I could not
3 provide any verification for him and he accepted that fact. I therefore suggested that he talk to the
4 one other person I knew who was in and around his offices at the time, namely, Jon Davidson. I
5 knew that Jon and Romi often previously discussed Romi's work at STS LLC. As a favor for my
6 brother, and because I would have provided the same courtesy to any other friend or colleague, I
7 had no trouble allowing Jon Davidson some free time away from his job at WeDirect to talk with
8 Romi about this matter. I believe Jon and Romi were trying to remember the dates of their various
9 conversations. I never directed Jon Davidson to do anything false or anything wrongful, nor would
10 I ever imagine that Jon would ever do so.

11 16. As to the help on the web design, in January 2007, I asked one employee of
12 WeDirect to help my brother with his web design; again, this was as a favor to him. Originally, an
13 employee of WeDirect named John Prince provided some input on the design of the STS Inc.
14 website; my estimate is that it was "work" valued at under \$500. In fact, Romi did not like the
15 original design that John Prince submitted and it was only through a number of iterations with
16 Romi (involving his authorship and decision-making) that an acceptable design was created.
17 Again, the total time and value was minimal and I did provide it as a gift: it was not something that
18 I felt I should charge my brother for and I still feel that way. I would do it for any other family
19 member as well. I did not personally do any of this work, nor did I even review this work. To my
20 knowledge, a Network Solutions server previously hosted the STS Inc. website (which website is
21 now shut down); neither I nor WeDirect has ever hosted any website for STS Inc. or for Romi.

22 17. Finally, I learned in March 2007 that STS Inc. was searching for about 1,500 square
23 feet of office space. At about that time, I heard that an office suite located in the same building in
24 San Jose in which my company, WeDirect, rents space might be available in a different suite and
25 on an entirely different floor of the building. I referred Romi to the office manager of the building
26 and made an introduction for my brother to that office manager of the building to determine if the
27 suite was, in fact, available. It was available and Romi on behalf of STS Inc. pursued the
28 opportunity to lease that suite. It is not shared space with WeDirect or with me and at no time have

1 WeDirect or I shared any space with Romi or with STS Inc. Indeed, though WeDirect and STS
2 Inc. are in the same office building, the two businesses share no space, no phones, no office
3 support, no secretarial and no other resources whatsoever. Neither WeDirect nor I have paid any
4 bills for STS Inc. or for Romi nor have they for me or WeDirect. I am paying for Russo & Hale,
5 my own independent legal counsel in this case.

6 **LAWSUIT BROUGHT BY VERIGY**

7 18. Without really investigating any of the foregoing facts, in August 2007, Verigy filed
8 a complaint against me as a co-defendant in this case. I frankly believe it was and is a mistake or,
9 if not, it is simply designed to pressure me and/or pressure my brother in some wrongful manner. I
10 do not understand why I was named as a defendant in this lawsuit, having no role or tie to STS Inc.
11 or STS LLC other than my family tie with Romi and my passive shareholder interest in STS Inc.

12 19. In October 2007, I was scheduled and ready to give testimony to Verigy, but Verigy
13 cancelled my deposition at that time. A deposition was again scheduled in November 2007, and I
14 was ready to testify again, but Verigy again cancelled that deposition as well. To my knowledge,
15 there has been no new deposition date scheduled.

16 20. In December 2007, STS Inc.'s counsel sent a letter to Bergeson, LLP ("Bergeson"),
17 counsel for Verigy, requesting that I be dismissed from this lawsuit. A true and correct copy of the
18 letter is attached hereto as **Exhibit D**. A couple of days later, Jay Fowler, Esq. of Bergeson replied
19 with an email, declining the request for dismissal but providing no factual or legal basis upon
20 which I should or could remain as a defendant. A true and correct copy of the email is attached
21 hereto as **Exhibit E**. Bergeson has not yet taken my deposition.

22 **REQUESTED RELIEF**

23 21. Based on all of the foregoing, I believe this lawsuit was brought against me without
24 any factual or legal basis and that it was brought without probable cause and for a wrongful
25 purpose; for all of these reasons, I respectfully request that the Court grant my motion for summary
26 judgment and dismiss me as a defendant from this case and that the Court issue an Order for
27 Verigy to show cause why it should not be liable for sanctions under Rule 11 of the Federal Rules
28 of Civil Procedure.

